

(b)(6)



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

DATE **JAN 20 2015**

OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Nebraska Service Center director (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a designer, developer and supplier of state of the art integrated technology. It seeks to permanently employ the beneficiary in the United States as an engineer principal-IC design. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The director found that the beneficiary did not meet the requirements for classification as an advanced degree professional.

The petitioner's appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

Classification as an Advanced Degree Professional

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

The beneficiary's degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." We cannot conclude that the evidence required to demonstrate that a beneficiary is an advanced degree professional is any less than the evidence required to show that the beneficiary is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30706 (July 5, 1991).²

Thus, the plain meaning of the Act and the regulations is that the beneficiary of an advanced degree professional petition must possess, at a minimum, a degree from a college or university that is a U.S. baccalaureate degree or a foreign equivalent degree.

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).³ The priority date of the petition is December 20, 2013.⁴ Part H of the labor certification states that the offered position has the following minimum requirements:

² Compare 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning relating to the area of exceptional ability").

³ See section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).

⁴ The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

- H.4. Education: Bachelor's degree in electronic engineering.
- H.5. Training: None required.
- H.6. Experience in the job offered: 144 months.
- H.7. Alternate field of study: electrical engineering or related.
- H.8. Alternate combination of education and experience: Master's degree and 9 years of experience.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: related occupation.
- H.14. Specific skills or other requirements: Professional experience or academic knowledge must include: Place and route; Static and timing analysis and formal verification; Programming languages such as TCL. **Employer will accept Bachelors Degree plus Twelve (12) years of experience in the job offered or any related occupation, Masters Degree plus Nine (9) years of experience in the job offered or any related occupation, or PhD Degree plus Six (6) years of experience in the job offered or any related occupation. **Employer will accept any suitable combination of education, experience or training.

Part J of the labor certification states that the beneficiary possesses a bachelor's degree in electronic engineering from the [REDACTED] India, completed in 2004. The record contains a copy of the beneficiary's diploma in electronics and communication engineering issued by the [REDACTED] India, in 1999. The record also contains a copy of the beneficiary's Associate Member diploma and transcripts from the [REDACTED] issued in 2004.

The record contains an evaluation of the beneficiary's educational credentials prepared by [REDACTED] for the [REDACTED] on March 8, 2013. The record also contains an evaluation of the beneficiary's educational credentials prepared by [REDACTED] for the [REDACTED] on August 7, 2014 and an evaluation from the American Association of Collegiate Registrars and Admissions Officers (AACRAO)⁵ prepared on January 6, 2012 and corrected on March 30, 2012. The AACRAO and [REDACTED] evaluations state that the beneficiary's 1999 diploma in electronics and communication engineering is equivalent to completion of High School and one year of undergraduate study at a regionally accredited college or university in the United States and that the beneficiary's Associate Membership in [REDACTED] is comparable to a bachelor's degree in electronics and communications engineering by a regionally accredited college or university in the United States. The Trustforte evaluation states that the beneficiary's Associate Membership in [REDACTED] is comparable to a bachelor's degree in electronic engineering by a regionally accredited college or university in the United States.

The Electronic Database for Global Education (EDGE) was created by AACRAO. EDGE is "a web-

⁵ According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.*

based resource for the evaluation of foreign educational credentials."⁶ We consider EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁷ EDGE confirms that the beneficiary's [REDACTED] Associate Membership from India "represents attainment of a level of education comparable to a bachelor's degree in the United States."

As is explained above, for classification as an advanced degree professional, the beneficiary must possess a foreign degree from a college or university that is equivalent to a U.S. bachelor's degree. Although AACRAO and EDGE confirm that Associate Membership in [REDACTED] is comparable to a U.S. bachelor's degree, it is not a degree from a college or university. The [REDACTED] is not an institution of higher education that can confer a degree.⁸ See [www.\[REDACTED\]](http://www.[REDACTED]) (accessed December 9, 2014). Therefore, the beneficiary possesses the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree" within the meaning of 8 C.F.R. § 204.5(k)(2).

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

The Minimum Requirements of the Offered Position

Beyond the decision of the director,⁹ the petitioner had also failed to establish that the petitioner possesses the required experience for the offered position.

The petitioner must establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of*

⁶ See <http://edge.aacrao.org/info.php>.

⁷ In *Confluence International, Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification required a degree and did not allow for the combination of education and experience.

⁸ See *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 at 11 (D. Ore. Nov. 30, 2006) (finding USCIS was justified in concluding that Institute of Chartered Accountants of India (ICAI) membership was not a college or university "degree" for purposes of classification as a member of the professions holding an advanced degree).

⁹ An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

Katigbak, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, USCIS may consider other documentation relating to the beneficiary's experience. *Id.*

Part K of the labor certification states that the beneficiary possesses the following qualifying experience:¹⁰

- Associate design engineer with [REDACTED] India, from March 13, 2000 to November 25, 2004.
- Component design engineer with [REDACTED] India, from November 29, 2004 to January 13, 2006.
- FSL design engineer II with [REDACTED] India, from January 16, 2006 to November 17, 2009.
- Staff design engineer with [REDACTED] India, from November 20, 2009 to April 29, 2011.
- Physical design engineer with [REDACTED] California, from May 1, 2011 to June 14, 2011.
- Staff design engineer with [REDACTED] California, from June 20, 2011 to August 17, 2012.

The record contains an August 17, 2012 experience letter from [REDACTED], Sr. director, human resources, on [REDACTED] letterhead stating that the company employed the beneficiary as a staff design engineer from June 20, 2011 through August 17, 2012. This accounts for 424 days of qualifying experience.

The record contains an April 29, 2011 experience letter from [REDACTED] human resource, on [REDACTED] letterhead stating that [REDACTED] employed the beneficiary as a staff design engineer from November 20, 2009 to April 29, 2011. The letter contains a description of the beneficiary's job duties, including the specific skills of place and route and static and timing analysis and formal verification listed in section H.14 of the labor certification. However, the letter does not contain an address.

The record contains a January 13, 2006 experience letter from [REDACTED] HR business partner, on Intel letterhead stating that [REDACTED] employed the beneficiary from November 29, 2004 to January 13, 2006. However, the letter does not provide the title and job description for the beneficiary or an address.

The record contains a November 17, 2009 experience letter from an unknown signatory on [REDACTED] letterhead stating that the company employed the beneficiary from January 16, 2006 to November 17, 2009 and was last employed as an FSL design

¹⁰ Part J.21 of the labor certification indicates that the beneficiary's experience with the petitioner in a position substantially comparable will not be used to qualify him for the proffered position.

engineer II. While the letter contains a description of the beneficiary's job duties, including the specific skills of place and route and static and timing analysis and formal verification listed in section H.14 of the labor certification, the letter does not contain the name, address or title of the signatory. Further, the letter is unclear as to whether the beneficiary was employed as an FSL design engineer II for the entire length of his employment with [REDACTED]

The record contains a May 3, 2011 experience letter from [REDACTED] country HR manager, on [REDACTED] letterhead stating that the company employed the beneficiary from March 13, 2000 to November 25, 2004 and was last employed as an associate design engineer. While the letter contains a description of the beneficiary's job duties, including the specific skills of place and route and programming languages such as TCL listed in section H.14 of the labor certification, the letter is unclear as to whether the beneficiary was employed as an associate design engineer for the entire length of his employment with [REDACTED]

Therefore, the submitted experience letters do not establish that the beneficiary possessed the required experience for the offered position. In any future filings, the petitioner should provide evidence of the beneficiary's qualifying experience which meets the requirements of 8 C.F.R. § 204.5(g)(1).

The petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date. Accordingly, the petition must also be denied for this reason.

Therefore, the beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. The director's decision denying the petition is affirmed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.